

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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LUIS MORALES,

Petitioner,

-against-

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IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

X

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01 CV 5507 (ARR)

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NOT FOR  
ELECTRONIC OR PRINT  
PUBLICATION

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OPINION AND ORDER

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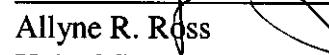
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ROSS, United States District Judge:

By motion dated November 1, 2004, petitioner moves pursuant to Federal Rule of Civil Procedure 60(b) to reopen or set aside the March 28, 2003 Mandate of the United States Court of Appeals for the Second Circuit denying his citizenship claim. In the alternative, petitioner seeks transfer of this motion to the Second Circuit. The court lacks jurisdiction to reopen or set aside a mandate of the Second Circuit in these circumstances. Although, upon finding a want of jurisdiction, courts are directed to transfer matters to a competent court, the court is constrained to do so only if it finds transfer to be in the interest of justice. 28 U.S.C. § 1631. Here, because plaintiff's factual showing fails to satisfy the statutory requirements of 8 U.S.C. § 1401, justice is not served by such a transfer.

Accordingly, the court declines to transfer petitioner's motion and the motion is dismissed. The Clerk of the Court is directed to enter judgment accordingly.

SO ORDERED.

  
Allyne R. Ross  
United States District Judge

Dated: August 16, 2005  
Brooklyn, New York

SERVICE LIST:

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cc: Magistrate Judge Pollak